

THE HON'BLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION NO.20928 of 2006

DATED 28.12.2006

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Between:

Manepalli Ammaji and four others. .. PETITIONERS

Versus

The Commissioner, Pithapuram
Municipality, Pithapuram, East
Godavari District.

.. RESPONDENT

WRIT PETITION NO.20928 of 2006

ORDER:

Heard both the learned counsel.

2. The Writ Petition is filed for a Writ of Mandamus declaring the action of the respondent in issuing the urgent notice dated 4.10.2006 vide proceedings Roc.No.272/06/A1 demanding the petitioners to pay the 2nd and 3rd instalment amounts of the auction purchase within 7 days by raising the rents of the shops from Rs.500/- to Rs.2,000/- per month by violating the terms and conditions of the tender notification dated 14.11.2003, as illegal, arbitrary, discriminative, mala fide and against the terms and conditions of the tender notice dated 14.11.2003 and consequently set aside the urgent notice dated 4.10.2006 issued by the respondent and pass such other suitable orders.

3. Sri A.K.Kishore Reddy, learned counsel representing the writ petitioner would submit that having fixed the amount at Rs.500/-, now the same cannot be enhanced by the Municipal Council to Rs.2,000/-. Learned counsel also made certain submissions relating to the representation made in this regard and non-consideration thereof.

4. Sri S.Nageswara Reddy, learned Standing Counsel has taken

this Court through the averments made in the counter affidavit and also placed before this Court GO RT No.535, dated 8.7.1998 and placed strong reliance on clause 8 of the Annexure and would maintain that in the light of the same, reasonable amount had been fixed by the Municipal Council and the same need not be disturbed by this Court.

5. It is stated in the affidavit filed in support of the Writ Petition that the respondent vide proceedings in Roc.No.272/B1.2001/E1, dated 14.11.2003 called for public auction of the shops situated in Pithapuram Municipality under goodwill auction and the conditions in the goodwill auction are that the auction purchaser shall have to deposit $\frac{1}{4}^{\text{th}}$ of the auction amount within 24 hours before the Treasury of the Municipality or by way of demand draft taken in favour of the Municipal Commissioner. The further conditions of the auction are that a further amount of $\frac{1}{4}^{\text{th}}$ of the total value shall be paid when the construction is started and completed upto lintel level and further an amount of $\frac{1}{4}^{\text{th}}$ of total value when construction raised upto the roof level and the remaining balance of $\frac{1}{4}^{\text{th}}$ shall be paid after completion of the shops. The shops will be handed over to the auction purchaser within three months from the date of commencement of the contract and the lease is for a period of eight years from the date of handing over of the shops to the auction purchasers. It is also stated that the price fixed for the shops is (I) (a) Rs.500/- per month for each shop situated near to Municipal Market, ground floor (size 12' x 10'); (b) Rs.2,500/- for the Municipal Restaurant situated on the first floor (size 50' x 12'); (II) (a) an amount of Rs.400/- each per month for 13 shops situated near Municipal Guest House on the ground floor (b) an amount of Rs.300/- each per month for 13 shops situated near Municipal Guest House on the first floor. The further conditions of the

auction are that (1) the intending participant shall have to pay an amount of Rs.10,000/- towards EMD and shall produce a solvency certificate for an amount of Rs.50,000/- otherwise he is not eligible to participate in the auction, for Restaurant an amount of Rs.50,000/- towards EMD and a solvency certificate for an amount of Rs.2,50,000/- shall be produced, otherwise he is also not entitled to participate in the auction. It is also stated that the petitioners and certain others participated in the auction on 20.11.2003 and became successful auction purchasers and they had paid an amount of Rs.70,250/-, Rs.66,250/-, Rs.63,750/-, Rs.58,750/- and Rs.58,000/- respectively before the Treasury, Pithapuram Municipality. As per the tender notification issued by the respondent, the shops, which are to be allotted to the petitioners, were not started as the construction had been delayed. It is also stated that when the matter stood thus, the respondent in his proceedings vide Roc.No.272/2001-E1, dated 3.4.2006 issued an urgent notice directing the petitioners to deposit the 1/4th value of the 2nd and 3rd instalment amounts which they have to deposit as per the tender conditions and further informed them that the shop rents were increased from Rs.500/- to Rs.2,500/- by violating the terms and conditions of the tender notification. It is also stated that after receipt of the urgent notice dated 3.4.2006, the petitioners approached the respondent and brought to his notice that as per the tender conditions, the shop rents were fixed with an amount of Rs.500/- per month in the year 2003 and the same was revealed in the tender notification and also demanding them by issuance of notice on 3.4.2006 by increasing the rents of the shops as Rs.2,500/- instead of Rs.500/- as illegal and requested him to reduce the same and hence they made a representation to that effect on 19.5.2006. It is also stated that after receipt of the representation dated 19.5.2006, urgent notice

dated 4.10.2006 had been issued fixing the rent of the shops at Rs.2,000/- indicating that the Municipal Council had made a Resolution to that effect and directed them to deposit the 2nd and 3rd instalment amounts which are to be deposited by them within 7 days. Several other factual details also had been narrated in the affidavit filed in support of the Writ Petition.

6. In the counter affidavit filed by the respondent it is stated that Pithapuram Municipality had issued auction notice basing on GO RT No.535, dated 8.7.1998 and as per the said G.O., the Municipality can raise goodwill amount by way of public auction for construction of shopping complexes. The Government issued guidelines annexed to GO.RT No.535, dated 8.7.1998 and as per clause 8 of the guidelines, the Municipal Council can fix a reasonable monthly rent for the proposed shop rooms and the auction should relate to goodwill amount. The said clause 8 reads as hereunder:

“The Municipal Council can fix a reasonable monthly rent for the proposed shop rooms and the auction should relate to goodwill amount. The goodwill amount may be collected in four instalments i.e., 25% immediately after approval, 25% when the construction comes up to lintel stage, 25% after the roof is laid and the balance 25% when the shops are handed over”.

It is also stated that the Municipal Council by its Resolution No.468, dated 28.2.2004, accepted the goodwill auctions, but not rents, and even prior to the notification or after the notification the rents had not been fixed by the Council till 31.3.2006. It is also stated that it is true that the Municipal Office had issued public auction notice for auction of the said shops situated at Municipal Market under goodwill auction and that minimum rent published in notification is Rs.500/-, but not the exact or final rent and it is true that the petitioners participated in the auction on 20.11.2003 and became successful auctioneers and also

paid 1/4th of the goodwill amount to Municipal treasury, and it is true that the constructions work had been delayed due to technical reasons. Further it is stated that Pithapuram Municipality had not issued any notice or proceedings to the petitioners regarding fixation of Rs.500/- as rent for the said shops. As per the norms of good will auction, the final rent to be fixed by the Municipal Council and as per the said norms, the Municipal Council, vide their Resolution No.318, dated 31.3.2006, had fixed the monthly rent as Rs.2,500/- based on present market value and also taking the neighbouring municipal shop rents into consideration. As per the Council Resolution, urgent notice was issued to the petitioners for depositing 1/4th value of the 2nd and 3rd instalments since the construction work was completed upto roof level and it is also informed in the said notice that the rent was fixed as Rs.2,500/-. Further, the petitioners submitted a representation for reducing the rent from Rs.2,500/- to Rs.500/-. It is further stated that on receipt of representation from the petitioners, the matter was placed before the Council and after deep discussions, the Municipal Council in its Resolution No.130, dated 15.9.2006, resolved to reduce the rent from Rs.2,500/- to Rs.2,000/- with sympathetic view and also taking into consideration the fact that the petitioners had deposited 1/4th of goodwill amount in November, 2003, which is nearly three years. It is also stated that in public auction notice, the size of the shop was mentioned as 12' x 10', but at the time of technical sanction of the said estimate, the size of the shops are increased to 20' x 11' based on the site conditions. It is stated that these shops are situated adjacent and facing K.N.F. Main road near Municipal Market, which is the main commercial location of the town and therefore the rent fixed is also very low in comparison with neighbouring rents of Municipal shops

and also private shops, which are above Rs.3,000/- for similar size of shops. It is further stated that Kona Venkata Ramana and Bollam Rama Swamy, who are the lease holders of shop Nos.1 and 3, which are situated besides the present shopping complex, are paying Rs.3,163/- as rent for their respective shops. It is also stated in paragraph 8 of the counter affidavit that the Municipal Restaurant situated at the 1st floor also fixed rent as Rs.9,000/- from minimum Rs.2,500/- mentioned in notification and hence the notice issued by the respondent in Roc.No.272/06-A1, dated 4.10.2006, is not illegal and arbitrary and the same was issued as per the guidelines in GO RT No.535, dated 8.7.1998.

7. In the light of the respective stands taken by the parties, it may be that initially Rs.500/- had been specified, but now as per condition No.8 of the Annexure to GO RT No.535, dated 8.7.1998 it is stated that the rent had been enhanced and duly fixed by the Municipal Council. In the light of the facts and circumstances inasmuch as it is stated that the petitioners had already made a representation to duly consider the grievances raised by them, the respondent, in the light of the peculiar facts and circumstances and also taking into consideration the delay of construction being on the part of the respondent, to reconsider the whole issue and take a decision afresh in the light of the tender notification and also the guidelines referred to in the G.O. referred to supra, within a period of two (02) weeks from the date of receipt of a copy of this order.

8. With the direction indicated above, the Writ Petition is disposed of. No costs.

28.12.2006

SSR

Issue order copy in two days.
(BO)